

**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW  
ETHICS ADJUDICATORY BOARD**

**BOARD OF ETHICS**

**\* DOCKET NO. 2019-15454-ETHICS-A**

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**IN THE MATTER OF**

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**CHRIS C. SMITH**

**\* AGENCY TRACKING NO. 5119-013**

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**DECISION AND ORDER**

The Louisiana Board of Ethics (BOE) proved by clear and convincing evidence that Chris C. Smith failed to file two required reports in connection with his unsuccessful candidacy for the office of Mayor of the Town of Arcadia in 2018. Pursuant to La. R.S. 18:1505.4(A)(2)(a)(iii), the BOE imposed a \$1,000 penalty for each failure to file the required report. Those penalties, totaling \$2,000, are **affirmed**. Pursuant to La. R.S. 18:1505.4(A)(4)(b) and La. R.S. 42:1141.5(B), an additional penalty of \$2,000 for each violation is assessed but these additional penalties will be waived if Chris C. Smith files the reports within sixty days of the issuance of this *Decision and Order*.<sup>1</sup>

**APPEARANCES**

The hearing in this matter was conducted March 13, 2020, in Baton Rouge before Ethics Adjudicatory Board, Panel A (EAB).<sup>2</sup> Jennifer Land, counsel for the BOE, appeared for the hearing. Though properly noticed,<sup>3</sup> Chris C. Smith (Respondent) did not appear for the hearing.

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<sup>1</sup> Subject to the suspension of legal deadlines in the Governor's proclamations regarding COVID-19 (30 JBE 2020, 33 JBE 2020, and 41 JBE 2020), and any additional proclamation or order that would affect the running of this sixty-day period.

<sup>2</sup> This panel consists of administrative law judges Lance B. Vinson (presiding), A. Brock Avery, and Sherlyn Shumpert.

<sup>3</sup> Division of Administrative Law correspondence dated January 10, 2020 (*Notice of Hearing*).

## STATEMENT OF THE CASE

Respondent ran for Mayor of the Town of Arcadia in 2018. In connection with his campaign for mayor, Respondent was provided with a schedule of report filing dates that included a report due on the tenth day prior to the primary (10-P) and a report due on the tenth day prior to the general election (10-G). Respondent did not file either report. The BOE issued Respondent *Late Fee Assessment Orders* as a result of his failure to file either the 10-P or 10-G report. After Respondent did not pay the late fees, the BOE requested the instant hearing.

Counsel for the BOE offered ten exhibits at the hearing<sup>4</sup> that were admitted into evidence. Counsel presented the case on behalf of the BOE, and the record was closed.

This adjudication is conducted in accordance with Code of Governmental Ethics, La. R.S. 42:1101, *et. seq.*, the Campaign Financial Disclosure Act, La. R.S. 18:1481, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation of the Division of Administrative Law, La. R.S. 49:991, *et seq.*

## FINDINGS OF FACT

- 1) Respondent qualified as a candidate for the Mayor of the Town of Arcadia for the election held on November 6, 2018.<sup>5</sup>
- 2) Respondent was provided with a *Schedule of Reporting and Filing Dates*<sup>6</sup> that listed the required reports by type, periods covered, due dates, and by whom the reports must be filed. All candidates were required to file, *inter alia*:
  - a. 10-P report, which was due October 29, 2018; and

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<sup>4</sup> All of the exhibits had been certified by affidavit to be true and correct copies of the BOE records.

<sup>5</sup> See BOE Exhibit 2 (Louisiana Secretary of State certification and candidate certification).

<sup>6</sup> BOE Exhibit 4. The full title is *Schedule of Reporting and Filing Dates for Candidates and PACs Supporting or Opposing Candidates (Reporting Schedule)*.

- b. 10-G report, which was due November 28, 2018.<sup>7</sup>
- 3) Respondent filed the Candidate's Report that was due thirty days before the primary (30-P) on October 10, 2018;<sup>8</sup> that report was due October 9, 2018.<sup>9</sup>
- 4) In Respondent's 30-P report, he reported total receipts of \$3,750, total disbursements of \$2,982.28, and funds on hand of \$767.72.<sup>10</sup>
- 5) Respondent did not file either the 10-P or the 10-G report by its deadline, and, on June 18, 2019, the BOE issued two \$1,000 late fee assessments, one for each report Respondent failed to file.<sup>11</sup>
- 6) The BOE served Respondent with a copy of the *Request for Hearing* by certified mail, return receipt requested; Respondent signed the return receipt card on December 14, 2019.<sup>12</sup>
- 7) As of the date of the hearing, Respondent had not filed the 10-P or 10-G reports or paid the assessed fees.

## CONCLUSIONS OF LAW

### Reporting Violations

In order to prevail in this matter, the BOE must prove by clear and convincing evidence<sup>13</sup> that Respondent knowingly<sup>14</sup> failed to file reports required under the CFDA, La. R.S. 18:1481, *et seq.* To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, that is, much more probable than its

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<sup>7</sup> *Id.*

<sup>8</sup> BOE Exhibit 5.

<sup>9</sup> BOE Exhibit 4.

<sup>10</sup> BOE Exhibit 5.

<sup>11</sup> BOE Exhibits 7 and 8.

<sup>12</sup> *See* BOE Exhibit 6.

<sup>13</sup> La. R.S. 42:1141.5(C).

<sup>14</sup> La. R.S. 18:1511.4.1(A).

nonexistence.<sup>15</sup> The BOE is aided in its burden of proof by a statutory presumption of intent not to file reports when a candidate fails to submit any required report within three days after the final date for its filing.<sup>16</sup> Once the BOE satisfies its burden, it is authorized to assess statutory penalties for a person's failure to meet CFDA reporting requirements.<sup>17</sup>

In this matter, the BOE proved that Respondent failed to file the 10-P and 10-G reports in connection with his candidacy for the Mayor of the Town of Arcadia in 2018. The CFDA requires that candidates file the 10-P and 10-G reports.<sup>18</sup> The statutory presumption of intent to not file a report is rebuttable. Nothing in evidence rebuts the presumption of Respondent's *knowing failure* requirement, and the evidence supports a finding it was highly probable Respondent knowingly failed to file these required reports. The evidence established Respondent was provided with the *Reporting Schedule* and that he filed only one report due under that schedule. The evidence also established that Respondent failed to file two additional reports clearly and expressly required under the *Reporting Schedule* and by statute. Further, there is no evidence that Respondent attempted to address or correct the filing failures after two letters from BOE assessing fees for those failures. Finally, despite being served with the *Request for Hearing* and the *Notice of Hearing*,<sup>19</sup> Respondent took no affirmative steps to address the underlying reporting failures or to participate in this adjudication to present any explanation or defense. It is much more probable than not that Respondent knowingly failed to file the subject CFDA reports, satisfying the clear and convincing burden of proof.

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<sup>15</sup> See, e.g., *Mitchell v. AT & T*, 27,290 (La. App. 2 Cir. 8/28/95), 660 So. 2d 204.

<sup>16</sup> La. R.S. 18:1505.1(A). ("Failure to submit the reports required by this Chapter shall constitute a violation of this Chapter. Failure to submit any such report within three days after the final date for filing shall be presumptive evidence of intent not to file the report.").

<sup>17</sup> La. R.S. 18:1511.4.1(A).

<sup>18</sup> See La. R.S. 18:1495.4(B)(4) and La. R.S. 18:1495.4(B)(5), respectively.

<sup>19</sup> See *Request for Hearing* (mailed to Respondent via certified mail on December 5, 2019) and *Notice of Hearing* (mailed to Respondent via U.S. Mail on January 10, 2020).

### Fixed Statutory Penalties

Pursuant to La. R.S. 18:1505.4(A)(2)(a)(iii), the BOE imposed a \$1,000 penalty for each failure to file a required report. That statute sets the penalty at \$40 per day, not to exceed one \$1,000, for a mayoral candidate,<sup>20</sup> and the maximum penalty was reached for each report.<sup>21</sup> Both penalties are affirmed.

### Additional Civil Penalties

After an adjudicatory hearing by a panel of the EAB conducted in accordance with the provisions of the Code of Governmental Ethics, with notice to the party who is the subject of the hearing, the BOE is statutorily authorized to impose an additional civil penalty not to exceed \$10,000.<sup>22</sup> It is the statutory role of the EAB to determine whether a violation has occurred and what penalties or other sanctions should be imposed.<sup>23</sup>

La. R.S. 18:1505.4(A)(4)(a) authorizes an additional civil penalty of up to \$10,000 for reports not filed by the sixth day after the report is due. La. R.S. 18:1505.4(A)(4)(b) authorizes an additional civil penalty of up to \$10,000 for reports not filed by the eleventh day after the report is due. In any instance where the latter is violated, the former would have been violated as well. Applying both provisions would penalize a candidate twice for the single act of not filing a required report. The rule of lenity applies to the imposition of these penalties.<sup>24</sup> That rule disfavors the imposition of penalties against a person twice for the same conduct.<sup>25</sup>

Respondent committed two separate violations of La. R.S. 18:1505.4(A)(4)(b), one for the 10-P report and another for the 10-G report. Those are distinct acts, and an additional

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<sup>20</sup> A mayoral candidate falls into the category of “other offices” for the purpose of determining the applicable daily penalty amount.

<sup>21</sup> The hearing was March 13, 2020. The 10-P Report was due October 29, 2018; the 10-G Report was due November 28, 2018.

<sup>22</sup> La. R.S. 18:1505.4(A)(4)(a).

<sup>23</sup> La. R.S. 42:1141.5(B).

<sup>24</sup> *Bd. of Ethics in Matter of Cartesian Co., Inc.*, 2016-1556 (La. App. 1 Cir. 10/12/17), 233 So. 3d 9.

<sup>25</sup> *Id.*, at 27-28.

penalty can be assessed to each. The statute provides no criteria for setting the amount of the penalty, but the doctrine covering the imposition of penalties for violations of the Code of Governmental Ethics provides that a penalty should be commensurate with the dereliction.<sup>26</sup>

Respondent had a relatively small campaign with total receipts of less than \$4,000.<sup>27</sup> The concerns of the CFDA<sup>28</sup> can be satisfied by Respondent's preparation and filing of the outstanding reports. However, Respondent's lack of responsiveness to the correspondence from the BOE and the instant adjudication suggests little motivation on his part to come into compliance with the reporting requirements of the CFDA. Under these circumstances, an additional penalty of \$2,000 for each violation is warranted, but those penalties will be waived if Respondent files both outstanding penalties within sixty days of the transmission of this *Decision and Order*.

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<sup>26</sup> See *La. Bd. of Ethics in re Great S. Dredging, Inc.*, 2015-0870 (La. App. 1 Cir. 5/27/16), 195 So. 3d 631, 643, writ denied sub nom. *La. Bd. of Ethics in the Matter of Great S. Dredging, Inc.*, 2016-1208 (La. 10/17/16), 207 So. 3d 1063.

<sup>27</sup> Per Respondent's 30-G report. Due to Respondent's failure to file the other two reports—and nothing in evidence to show or give rise to an inference that his receipts or disbursements increased after the filing of the 30-G report—the amount of \$3,750 is the only competent evidence of the financial amount involved in his campaign.

<sup>28</sup> La. R.S. 18:1482. ("The legislature recognizes that the effectiveness of representative government is dependent upon a knowledgeable electorate and the confidence of the electorate in their elected public officials. The legislature, therefore, enacts this Chapter to provide public disclosure of the financing of election campaigns and to regulate certain campaign practices.")

## ORDER

**IT IS ORDERED** that the assessment by the Board of Ethics of a penalty of \$1,000 against Chris C. Smith for violating La. R.S. 18:1491.4(B)(4) is **affirmed**;

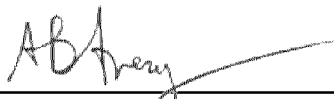
**IT IS ORDERED** that the assessment by the Board of Ethics of a penalty of \$1,000 against Chris C. Smith for violating La. R.S. 18:1491.4(B)(5) is **affirmed**; and

**IT IS ORDERED** that two additional civil penalties of \$2,000 each are assessed against Chris C. Smith pursuant to La. R.S. 18:1505.4(A)(4)(b), but those penalties will be waived if Mr. Smith files the outstanding 10-P and 10-G reports within sixty days of the transmission of this *Decision and Order*.

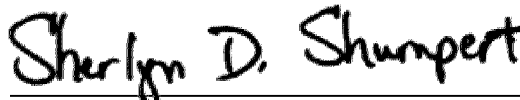
Rendered and signed May 1, 2020, in Baton Rouge, Louisiana.



Lance B. Vinson  
Presiding Administrative Law Judge



A. Brock Avery  
Administrative Law Judge



Sherlyn Shumpert  
Administrative Law Judge

### NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Monday, May 04, 2020, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court

Division of Administrative Law

## **REVIEW RIGHTS**

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds in La. R.S. 49:959, and the extensions to those timing requirements contained in the Governor's proclamations regarding COVID-19 (30 JBE 2020, 33 JBE 2020, 41 JBE 2020, and 53 JBE 2020), and any additional proclamation or order that would affect the timeliness of a request for rehearing, reopening, or reconsideration. As of the date of this *Decision and Order*, a request for rehearing, reopening, or reconsideration must be received by the Division of Administrative Law within ten days of May 15, 2020 (though that deadline might be extended by an additional gubernatorial proclamation or order). You may fax your request to (225)219-9983 or email it to [EABprocessing@adminlaw.state.la.us](mailto:EABprocessing@adminlaw.state.la.us).

Judicial review of this decision is subject to procedures and time limits under La. R.S. 42:1142 and the Governor's proclamations referenced above. To determine your rights to review you should act promptly and seek legal advice.